IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 224 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ANKUSH HOLDINGS LTD. - Petitioner(s)
Versus
MERCURY METALS LTD. - Respondent(s)

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Appearance :
MR VIMAL M PATEL for Petitioner(s) : 1,
MR ANSHIN H DESAI for Respondent(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 17/03/2006

ORAL JUDGMENT

1. The present company petition has been filed by the petitioner M/s Ankush Holdings Ltd. For an appropriate order for winding up of the

respondent company i.e. Mercury Metals Ltd. Submitting interalia that the respondent company has lost its substratum and that it has become financial bankrupt and it is unable to pay its debts.

2.

3. It is the case on behalf of the petitioner that a sum of Rs.7,04,000/- is outstanding and inspite of the repeated requests and demand, the respondent company did not pay the aforesaid amount and therefore, the petitioner was constrained to serve a statutory notice upon teh respondent as required under Section-434 of the Companies Act, 1956 calling upon the respondent company to make payment and in response to the same vide reply / letter dated 30.6.2003 the respondent company informed the petitioenr company through its lawyer that they are passing through critical financial problems and they are not in position to clear up immediately the entire outstanding dues of Rs.7,04,000/-.

Considering the fact that no amont was paid by the respondent company and that the respondent company has neglected and failed to pay dues of the petitioner company, the petitioner has present company petition for the aforesaid relief.

4. Considering the submissions made on behalf of the petitioner that since after 30.6.2003 the respondents have not paid anything to the petitioner and despite of service of the notice of the present petition, the respondents have not filed any reply, nor have paid anything to the petitioner, the learned Single Judge of this Court (Coram : R.S.Garg, J.) by order dated 18.1.2006 admitted the present petition by holding tha the company has lost its substratum and it is not financially viable and is unable to pay debts. Admission of the petition was directed to be advertised in two dailies viz. `Indian Express' English Edition and `Sandesh' Gujarati

Edition both Ahmedabad publications and publication of advertisement in the Government Gazette is dispensed with. Affidavit is filed on behalf of the petitioner that pursaunt to the order dated 18.1.2006, the petitioner company gave notice of admission of petition on 3.2.2006 in English Newspaper `Indian Express' as well as `Sandesh' (Gujarati) both Ahmedabad editions. It appears that since after admission of the petitioner and advertisement of the admission, the respondent company has not done anything. It has not paid the dues of the petitioner, nor it has settled the matter. It has not come out with any affidavit that the company is profit making company or is able to discharge its liabilities and debts. Therefore, considering the above, in my opinion, the respondent company has neglected to pay the dues of the petitioner company and is not in a position to survive and the respondent company has become insolvent within the provisions of the Companies Act, 1956, the

respondent company is required to be wound up.

5. For the reasons stated above, the petition is allowed. The respondent company is directed to be wound up. The Official Liquidator attached with this Court is appointed as Official Liquidator for the respondent company. The Official Liquidator is hereby asked to take possession of the property (movable and immovable) of the respondent company along with its bank accounts, cash and accounts books etc. The Official Liquidator shall submit his report within a period of three months. If required, he can take services of the Official Valuer for the purpose of preparation of possession note etc. No costs.

The petition is accordingly disposed of.

[M.R.Shah, J.]

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